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ORS 79.1100
ORS 79.3060(1)
ORS 79.4020(a)
Income
Proceeds

Cottage Grove Hospital v. Glickman et. al Adv. # 98-6272-aer
(In Re Cottage Grove Hospital) Main Case # 698-64406-aer11

5/6/99 AER Published

The Rural Utility Service, an agency of the U.S.D.A., took a security interest in, among other things, Debtor's accounts. Its U.C.C. financing statement described the collateral as "[a]ll Debtor's income". Debtor brought suit to determine whether the government's security interest was properly perfected.

Held: The security interest was unperfected. The term "[a]ll Debtor's income" was too broad or generic to sufficiently describe the collateral for purposes of a financing statement. See ORS 79.4020 and 79.1100. In the alternative, the term "all income" may describe "proceeds", see ORS 79.3060(1), as opposed to "collateral", in contravention of ORS 79.4020, citing In Re Softalk Publishing Company, Inc., 856 F.2d 1172 (9th Cir. 1989).

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

| | | |
|--------------------------|---|----------------------|
| In Re: |) | Bankruptcy Case No. |
| |) | 698-64406-aer11 |
| COTTAGE GROVE HOSPITAL, |) | |
| |) | |
| Debtor-in-possession. |) | |
| COTTAGE GROVE HOSPITAL, |) | Adversary Proceeding |
| |) | No. 98-6272-aer |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| DANIEL GLICKMAN, et al., |) | MEMORANDUM OPINION |
| |) | |
| Defendants. |) | |

BACKGROUND

The Debtor-in-possession (Debtor) has commenced this
adversary proceeding seeking a declaration that the Rural Utility
Service (RUS), an agency of the United States Department of
Agriculture and successor to FmHA, does not have a perfected
security interest in the Debtor's accounts. Siuslaw Valley Bank
(Bank), another creditor claiming a security interest in the
Debtor's accounts, has been joined as a party defendant.
/////

1 This matter comes before the court upon cross motions for
2 summary judgment filed by the RUS and the Debtor. The Bank joins in
3 the Debtor's Motion for Summary Judgment.

4 The court should grant summary judgment when it "is satisfied
5 'that there is no genuine issue as to any material fact and . . .
6 the moving party is entitled to a judgment as a matter of law.' Fed.
7 Rule Civ. Proc. 56(c)." Celotex Corp. v. Catrett, Administratrix of
8 the Estate of Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L.
9 Ed.2d 265 (1986).

10 Here, there is no genuine issue as to any material fact.
11 Those facts material to this court's decision are as follows:

12 1. On December 21, 1981, the FmHA made two community
13 facility loans to Debtor. The first loan was for \$1,070,000 to be
14 repaid in twenty five years at 5% interest per year. The second
15 loan was for \$810,000 to be repaid in twenty five years at 12%
16 interest per year. The second loan was paid in 1994.

17 2. As security for the above-described loans, Debtor granted
18 FmHA a real property mortgage¹ and Debtor signed a security
19 agreement granting the FmHA a security interest in "[a]ll present
20 and future contract rights, accounts receivable, and general
21 intangibles arising in connection with the facility"

22 3. In order to perfect its security interest in the Debtor's
23 personal property described above, the FmHA filed a UCC Financing
24

25
26 ¹The perfection of the government's mortgage is not in issue.

1 Statement with the Oregon Secretary of State on August 6, 1985
2 describing the collateral as "All Debtor's Income".

3 4. In 1994, Debtor refinanced part of its obligations to
4 FmHA with funds borrowed from the Bank.²

5 5. In 1996, reorganization of the USDA resulted in the
6 elimination of FmHA as an agency and the transfer of its rights and
7 obligations to a new agency known as the RUS. The Debtor's
8 obligation to repay the community loans now runs to the RUS.

9 ISSUE

10 The sole issue that this court must resolve is whether or not
11 the description of "All Debtor's Income" contained in the FmHA's
12 financing statement is sufficient to perfect a security interest in
13 the Debtor's accounts.

14 DISCUSSION

15 The argument of the RUS that it has complied with all
16 appropriate federal regulations is not material to this court's
17 decision, since the parties agree that the question presented is
18 resolved by an examination of Oregon's version of the Uniform
19 Commercial Code.

20 The term "account" is defined by O.R.S. 79.1060(1) as "any
21 right to payment for goods sold or leased or for services rendered
22

23
24 ²RUS contends that the Bank's knowledge of the FmHA's security
25 interest is a material fact which this court should take into
26 consideration. The negotiations between the FmHA and the Bank,
however, are irrelevant to this court's determination of the pending
motions.

1 which is not evidenced by an instrument or chattel paper, whether or
2 not it has been earned by performance."

3
4 O.R.S. 79.4020(a) provides in pertinent part that "[a] financing
5 statement is sufficient if it . . . contains a statement indicating
6 the types, or describing the items, of collateral." Concerning the
7 sufficiency of the description of collateral in a financing
8 statement, O.R.S. 79.1100 provides "any description of personal
9 property or real estate is sufficient whether or not it is specific
10 if it reasonably identifies what is described."

11 Thus, the question presented here is whether or not the
12 statement "All Debtor's Income" reasonably identifies "accounts".
13 This court has not found any cases from any jurisdiction
14 interpreting the sufficiency of the description: "All Debtor's
15 Income". Where there are no Oregon cases directly on point,
16 however, this court may look to decisions from other courts for
17 guidance. Westinghouse Electric Supply Company v. John Mitchell,
18 Civil No. 92-10-MA (D. Or. Mar. 24, 1992) (unpublished) (Marsh, J).

19 The Code [UCC] . . . contemplates no fine distinctions
20 of form as to descriptive language identifying
21 property subject to a . . . security interest. In
22 [sic] merely looks to the substance of the
transaction, and the ordinary and common meaning to be
attached to that which the parties contemplate as the
encumbered object.

23 Biggins v. Southwest Bank, 490 F.2d 1304, 1308 (9th Cir. 1974).

24 "Only the most basic description of property deemed to be collateral
25 for a security interest under Division 9 of the California
26 Commercial Code . . . is required by C.C.C. §9402 [O.R.S. 79.4020]."

1 In re Munger, 495 F.2d 511, 512 (9th Cir. 1974). It has been held
2 that a financing statement describing collateral as "inventory" is
3 sufficient to warn prospective creditors that the secured party's
4 collateral could include after-acquired property. Evans Products
5 Company v. Jorgensen, 245 Or. 362, 421 P.2d 978 (1966).

6 On the other hand, in In re Becker, 46 B.R. 17 (Bankr. W.D.
7 Wis. 1984), the court held that a financing statement covering "all
8 farm personal property" was not sufficient to perfect a security
9 interest in farm equipment, livestock, accounts and contract rights.

10 In In re Softalk Publishing Company, 856 F.2d 1328 (9th Cir.
11 1988), the court dealt with a financing statement that described
12 collateral under the label of "proceeds". O.R.S. 79.3060(1) defines
13 proceeds to include "whatever is received upon the sale, exchange,
14 collection or other disposition of collateral. . . ." Noting that
15 the purpose of a financing statement is to put third parties on
16 notice of a potential encumbrance and to prompt them to inquire
17 further, the court held that "a financing statement that contains no
18 description of collateral at all is insufficient to perfect a
19 security interest" Id. at 1331.

20 The case which appears to offer the greatest guidance to this
21 court is In re Boogie Enterprises, Inc., 866 F.2d 1172 (9th Cir.
22 1989). At issue there was the question of whether a financing
23 statement describing collateral as "all personal property" was
24 sufficient to perfect a security interest in the proceeds of the
25 settlement of a lawsuit. There, the court stated in relevant part,
26 as follows:

1 The purpose of the financing statement is to put
2 subsequent creditors on notice that the debtor's
property is encumbered.

3 . . . § 9402 [O.R.S. 79.4020] is to be read
4 liberally: . . . However, . . . § 9402 is not a
5 nullity; the statute does require a financing
statement to contain a reasonable description of the
encumbered property.

6

7 . . . [F]inancing statements under the Uniform
8 Commercial Code must describe collateral with greater
precision than that furnished by the term "personal
9 property."

10

11 If the language "personal property" were
12 sufficient to perfect a security interest, creditors
13 would never need to use any other language to
designate collateral. This is plainly at odds with §
9402's policy of requiring disclosure to potential
creditors of the nature of encumbered collateral.

14 Id. at 1173-1175 (internal citations omitted).

15 The UCC does not define the term "income". Webster's Third
16 New International Dictionary (1993) defines the term as:

17 [A] gain or recurrent benefit that is usually
18 measured in money and for a given period of time,
19 derives from capital, labor, or a combination of both,
20 includes gains from transactions in capital assets but
excludes unrealized advances in value: commercial
revenue or receipts of any kind except receipts or
returns of capital.

21 Black's Law Dictionary 687 (5th ed. 1979) defines the term as

22 The return of money from one's business, labor or
23 capital invested; gains, profits, salary, wages etc.

24 The gain derived from capital, from labor or
25 effort, or both combined, including profit or sale
26 through sale or conversion of capital. . . .

1 Thus, the term "income" closely resembles O.R.S. 79.3060(1)'s
2 definition of "proceeds".

3 /////

4 In any event, this court concludes that the term "all
5 income", like the term "all personal property" is too broad or
6 generic to sufficiently describe collateral for the purposes of a
7 UCC financing statement.

8 In the alternative, the term "all income" may describe
9 proceeds, as opposed to collateral, in which case, the UCC financing
10 statement fails to perfect RUS's security interest in accordance
11 with the reasoning expressed by the Ninth Circuit Court of Appeals
12 in In re Softalk Publishing Company, Inc., supra.

13 CONCLUSION

14 Based upon the foregoing, this court concludes that the
15 motion of the RUS for summary judgment should be denied and the
16 cross motion of the Debtor for summary judgment should be granted.
17 The Debtor is entitled to an order and judgment of this court
18 declaring that the RUS does not have a properly perfected security
19 interest in the Debtor's accounts. This opinion contains the
20 court's findings of fact and conclusions of law pursuant to
21 Bankruptcy Rule 7052; they shall not be separately stated.

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25 ALBERT E. RADCLIFFE
26 Bankruptcy Judge